DOCKET FILE COPY ORIGINAL

RECEIVED

JUL - 1 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96–128

Orig

COMMENTS OF THE
GEORGIA PUBLIC COMMUNICATIONS ASSOCIATION

Newton M. Galloway
113 Concord Street
Zebulon, GA 30295
(706) 567-3080

Attorney for Georgia Public
Communications Association

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN, SHAPIRO, MORIN &
OSHINSKY, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2226

Special Attorneys for Georgia Public
Communications Association

July 1, 1996

No. of Copies rec'd 0 + 11
List A B C D E

554800

Georgia Public Communications Association
July 1, 1996

SUMMARY

Section 276(b)(1)(C) requires the Commission xxixto establish safeguards that "at a minimum" are as stringent as the Computer III safeguards. But the Commission must go beyond these minimums given the BOCs already entrenched position in payphones. Indeed, mergers between BOCs justifies separate subsidiaries on the merged companies.

In reclassifying LEC payphones as CPE, the Commission must state with particularity how the BOCs must comply with the Computer III safeguards. The BOCs must make unbundled answer supervision and flexible call rating based on the subscriber's specifications, as well as coin supervision.

Interconnection must begin from a basic dial tone line and add each feature on an unbundled basis. Further, it will be necessary to closely scrutinize and tariff at the federal level the functionality used to support BOC "dumb" payphones since the BOCs will be motivated to price them at a discriminatorily low rate. In any event, all services must be priced using the same methodology. The BOCs must also m make volume discounts available on an equal basis to "aggregations" of IPP providers. To allow these aggregations to obtain the same discounts, there must be a "trigger" point where a maximum discount kicks in.

Embedded inside wired should be available to all providers on an equal basis. There should be a uniform demarcation point t for both embedded and new wire installations.

Fraud protection should be made available on an equal basis. Installation and maintenance and billing, collection and validation services must be available to IPP providers on the same basis as to the LECs' payphone divisions. Per call tracking must also be available, as must joint

marketing opportunities. As with discounts on services, commission payments must reach a maximum level at volumes that are achievable by aggregations of IPP providers.

The assets to be transferred out of the regulated books must include the contracts associated with the payphones. The contracts must be assigned an economic value to recover ratepayer equity and achieve competitive parity. A number of valuation approaches are possible, including present valuation appraisal and auctioning.

IPP provider end user common line charges for IPPs should be put in the carrier common line fund under the same rationale that has allowed LEC EUCLs to be in CCC all these years.

The Commission should presubcribe safeguard in each of the areas addressed by the NPRM. Other areas, including service order processing and interference with letters of agency must also be addressed.

Compliance safeguards must include the submission of compliance plans, independent audits, and publicly available contracts with affiliates.

The Commission should apply all these safeguards to the non-BOC LECs, including GTE, Sprint, and Alltel.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128

COMMENTS OF THE
GEORGIA PUBLIC COMMUNICATIONS ASSOCIATION

The Georgia Public Communications Association ("GPCA") hereby comments on the Commission's Notice of Proposed Rulemaking, FCC 96-254, released June 6, 1996 ("Notice"), to implement Section 276 of the Communications Act of 1934, 47 U.S.C. § 276, as added by Section 151(a) of the Telecommunications Act of 1996, Pub. L. 104-104 (Feb. 8, 1996). GPCA's comments focus on the reclassification of local exchange carrier ("LEC") payphones pursuant to Section 276(b)(1)(B) of the Act (Notice, ¶¶ 41-56) and the adoption of safeguards to prevent Bell companies and other LECs from subsidizing and discriminating in favor of their payphone operations. (Notice, ¶¶ 57-66).

I. STATEMENT OF INTEREST

The Georgia Public Communications Association is a trade association of independent (non-local exchange carrier) public payphone ("IPP") providers doing business in the state of

Georgia. GPCA members install and operate public pay telephones and provide related public communications products and services.

II. LEC PAYPHONE RECLASSIFICATION AND SAFEGUARDS (¶¶ 41-66)

Under Section 276(b)(1)(B) of the Act, Congress directs the Commission to prescribe regulations that:

> discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A)[.]

47 U.S.C. § 276(b)(1)(B).

As explained in the Conference Committee's Explanatory Statement, this provision requires the Commission to "eliminate. . .all subsidies or cost recovery for BOC payphones from regulated interstate or intrastate exchange or exchange access revenue." H.R. Rep. No. 458, 104th Cong., 2d Sess. 158 91996) ("Conference Report"). Accordingly, the Commission must adopt rules that provide for the removal from regulated accounts of all investment and expenses related to payphones.

GPCA agrees with the Commission that the compensation and reclassification provisions of Section 276(b)(1)(B) applies to all LEC payphone, including those operated by non-Bell LECs. Notice, ¶ 14, n. 47. In addition, the Commission has, and should exercise, authority under the general provisions of the Communications Act to apply safeguards against subsidies and discrimination to non-Bell LECs. See Section F below.

Under Section 276(b)(1)(C) of the Act, Congress directs the Commission to prescribe regulations that

> prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry III (CC Docket No. 90-623) proceeding[.]

47 U.S.C. § 276(b)(1)(C).

The legislation points to Computer III[1] as the model for the minimum level of protection against discrimination and cross-subsidy that the Commission must provide. However, Computer III is only a minimum level. The Commission's safeguards must provide stronger protection than was required in Computer III, in order to ensure that a Bell Company does not "subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations" and to ensure that a Bell Company does not "prefer or discriminate in favor of its payphone service."

First, Section 276 states unequivocally that Bell Companies "shall not subsidize" and "shall not discriminate". It does not say "shall not unreasonably subsidize" or "shall not unreasonably discriminate". Further, the statute does not direct the Commission to balance efficiency concerns

---

[1] See e.g., Amendment of Sections 64.702 of the Commission's Rules and Regulations, (Computer III), CC Docket No. 85-229, Phase I, Report and Order , 104 FCC 2d 958 (1986) (Phase I Order), recon., 2 FCC Rcd 3035 (1987), (Phase I Further Reconsideration Order), second further recon., 4 FCC Rcd 5927 (1989) (Phase I Second Further Reconsideration Order), Phase I Order and Phase I Reconsideration Order vacated sub nom., California v. FCC, 905 F.2d 1217 (9th Cir. 1990) (California); Phase II, CC Docket No. 85-229, 2 FCC Rcd 3072 (1987) (Phase II Order), recon., 3 FCC Rcd 1150 (1988) (Phase II Reconsideration Order), further recon., 4 FCC Rcd 5927 (1989) (Phase II Further Reconsideration Order), Phase II Order vacated sub nom., California v. FCC, 905 F.2d 1217 (9th Cir. 1990), pet. for rev. pending, BellSouth Corp. v. FCC (9th Cir. No. 88-7290, filed April 20, 1988). Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards, Notice of Proposed Rulemaking and Order, CC Docket No. 90-623, 6 FCC Rcd 174 (1990) (Notice).

with concerns about subsidies and discrimination, as was done in Computer II and Computer III. Section 276 simply directs the Commission to end subsidies and discrimination.

Finally, payphones have a much different history than enhanced services. At the time of Computer III, the Bell Companies were essentially new entrants into the enhanced services business. The Commission had determined that existing competitors were not meeting customer needs, and wanted to adopt regulations that did not place such an onerous burden on an arguably more efficient new competitor as to prevent it from even beginning to compete.[2] Phase I Order, 104 FCC 2d at 1007-10. The history of payphones is much different. The Bell Companies and other LECs have dominated the payphone industry for years, and their payphone operations have long benefited from obviously unequal interconnection and other forms of discrimination as well as acknowledged subsidies. In these circumstances, stronger measures are necessary to ensure that the legacy of inequality is removed.

There is one additional preliminary comment. GPCA addresses below the various non-structural safeguards. But GPCA believes that, in light of the announced merger between Bell Atlantic and NYNEX and the announced merger between Pacific Bell and Southwestern Bell, the Commission is authorized to and should require a fully structurally separate subsidiary for the payphone operations of the merged companies. When Congress adopted Section 276(b)(1)(C), it

---

2 Similarly, when Computer II was implemented, the Bell Companies had transferred their existing customer premises equipment ("CPE") base to AT&T, and were starting out in the CPE market with essentially zero market share. Accordingly, the Commission was very concerned about not unduly burdening the Bell Companies' CPE operations. Even so, the Commission applied separate subsidiary requirements to the Bell companies for the first two years that the companies were subject to Computer II. Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Equipment by the Bell Operating Companies, Report and Order, 95 FCC 2d 1117 (1984) (subsequent history omitted).

was faced with seven BOCs, not five. The enhanced market power that will be available to each merged entity is a change of circumstance that justifies and requires enhanced competitive safeguards.[3] While the Commission may be barred from imposing a separate subsidiary on any one of the BOCs,[4] it can impose the separate subsidiary on a combination of two of them.

A. Classification of LEC Payphones as CPE (¶¶ 42-48)

GPCA agrees that incumbent LEC payphones should be classified as unregulated, detariffed CPE. Notice, ¶ 42. However, classification of LEC payphones as CPE does not mean that only those safeguards adopted in Computer II and subsequent CPE decisions are appropriate.

GPCA also agrees that incumbent LECs should be required to provide to payphone service providers ("PSPs"), on a nondiscriminatory basis, all functionalities used in a LEC's delivery of payphone services. Notice, ¶ 42 The most important functionalities should be the subject of explicit regulations detailing the minimum functions that LECs should provide and the nondiscriminatory conditions for offering such functions to IPPs and LEC payphones. The Commission must take this critical step because the Act does not remove LECs' strong incentive to subsidize and discriminate in favor of their own payphone operations. If the details of implementing nondiscriminatory offerings are left to be "worked out" it is very likely that those details will be the subject of endless disputes and stonewalling that prevent the Act's mandate to end subsidies and discrimination from being fulfilled in a timely fashion.

---

[3] In addition to its authority in this proceeding, the Commission can require the separate subsidiary as a condition of approving the mergers.

[4] The Commission may also address separate subsidiaries as part of its Section 276(b)(1)(D) determinations.

1. Access Line and Coin Services

The Notice notes that LECs have been able to use less expensive "dumb" payphones because they have been able to use central office coin services, such as coin recognition, answer detection, and other related services. Notice, ¶ 43. Requiring these services to be made available to IPPs will eliminate part of the LEC's cost advantage if the services are priced so as to ensure nondiscrimination between LEC payphones and IPPs.

The unbundling and pricing of interconnection services is probably the single most important issue -- other than transfer valuation (see below) -- involved in the restructuring of LEC payphone regulation. It is vital for the FCC to clearly analyze and effectively address the issues involved.

IPP providers generally do not need LEC coin services as a bundled package. IPP providers do need unbundled answer supervision. A key quality-of-service issue for IPP providers has been their ability to ensure that coin deposits are retained when and only when calls are completed. As in the "unequal" access period of the long distance industry, the unavailability of "true" answer supervision at a reasonable price tends to relegate IPPs to second-class status in the eyes of consumers.

In addition to answer supervision, IPP providers are interested in call rating and coin supervision services in order to relieve the burden on memory in payphone sets and/or to provide improved fraud protection.[5] However, such services are not particularly useful unless they enable

---

[5] From a fraud protection perspective, there is a distinct advantage in having coin supervision take place in the network.

the IPP provider to determine its own rate structure.[6] To the extent that coin functionality is "bundled" with call rating based on LEC rates, it does not meet the needs of IPPs. It would be discriminatory for LECs to offer only the coin rating used by their own payphone divisions.

Therefore, in order to implement the non-discrimination requirement of Section 276(a)(2) the Commission must require that network support facilities for Bell payphones be adapted so that they are available on an unbundled basis to support IPPs as well. Coin line features must be fully unbundled so that IPP providers can subscribe to those features which are of value to them without also being required to take features that have no utility to IPP providers.[7] IPP providers should be able to obtain unbundled answer supervision that is as accurate as that available to Bell companies. Such answer supervision should be available at a relatively nominal price independently of other coin line features

Coin supervision and call rating features must be restructured so that they are available on a truly nondiscriminatory basis. Call rating must be programmable based on the subscriber's specifications, and must be priced on the same basis when offered to the LEC's own payphone operations or to IPP providers. Further, even if such features are made available on a facially non-discriminatory basis the LEC would retain a cost advantage for the foreseeable future because IPP providers have paid to include these services in their equipment while LECs have not.

---

6 For example, some IPP providers advertise promotional toll calling rates such as a uniform 25 cents per minute charge to call any point in the contiguous United States.

7 Other ongoing proceedings could affect the degree of unbundling that is required. For example, the Section 251 proceeding on interconnection involves regulations on unbundling of network elements. 47 U.S.C. § 251(c)(3). The specific regulations adopted here regarding unbundling or other issues should not detract from the general obligations of LECs pursuant to the Act and the Commission's implementing rules.

LECs should offer a tariffed rate for basic interconnection, i.e., the dial tone line currently offered to IPPs, as the basic minimum to which all payphones subscribe. LECs should be required to offer additional unbundled "coin" functions both to their own payphones and to IPPs that wish to make use of coin functions, and should be required to charge an additional rate for each unbundled coin line feature subscribed to, on top of the basic rate for interconnection. Of course, the blocking and screening services that the Commission has required to be available to IPP providers should continue to be available.

The Notice expresses concern that LECs may have an incentive to price basic transmission services unreasonably high in order to raise rivals' cost of service. This is a real concern for unbundled services such as answer supervision and individually programmable call rating, which are generally needed by payphone providers. If LECs are not required to fully unbundle their coin line services, however, the opposite problem may result. Since, as discussed above, coin services as currently provided are useful primarily to LECs because of the LECs' heavy investment in "dumb" payphones, the LECs would have an incentive to price those services as low as possible, while pricing basic "COCOT" lines and answer supervision as high as possible.

Therefore, the pricing of coin lines and coin line features used primarily or exclusively by Bell company payphones must be carefully reviewed so that they are not priced below cost and so that the rates do not effectively discriminate between Bell payphones, which generally use such features today, and IPPs, which generally do not use such features today. Coin line features should be tariffed at the federal level so that the Commission can directly review the pricing of those features, at least until such time as the Bell companies' market power is sufficiently dissipated to remove the potential for subsidies and discrimination. The Commission has jurisdiction under Section 276 to require federal tariffing of coin line features. Cost support should be required to be provided pursuant to the Commission's Part 61 rules for non price cap regulated LECs.

In any event, whether priced at the federal or state level, the Commission must ensure that the same methodology is applied to all services. The LECs must be requirec to use the same methodology used to set the rates for services offered to the LEC payphone division to retariff the "dial tone" rate and the rate for every other service. The resulting prices must not discriminate between LEC and independent payphone service providers. Further, as discussed in the Commission's Interconnection rulemaking, (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, at ¶¶ 184-87 (April 19, 1996) the Commission should also require that the sum of unbundled coin line functions and features should not exceed the "bundled" whole. If necessary, the Commission should prescribe repricing of IPP lines to ensure nondiscrimination between LEC payphone divisions and IPPs.

The Commission should also ensure that LECs do not provide themselves with volume discounts on either basic interconnection rates or coin line features, the eligibility rules for which effectively ensure that the LECs' own payphone operations are the only beneficiaries of dramatic discounts. With respect to basic interconnection discounts, for the foreseeable future, each Bell company will continue to have a far larger number of payphones than any of their competitors. [evidence] While some level of discount may well be justified, there is potential for abuse as long as a Bell company is able to set criteria to qualify for its deepest discounts at volume levels (e.g., based on total number of payphone lines) for which only the LEC's payphones can qualify. The Commission should adopt standards on the types of volume discounts that may be offered. To the extent that discounts are allowed at all, the largest discount should be applicable to quantities of payphone lines as low as 5% of the number of payphone lines provided to the LEC payphone division and affiliated entities in the area covered by the tariff.[8] In this connection, the Commission should require LECs, as a condition of permitting the LECs offer volume discounts, to allow aggregation of IPPs among different companies in order to qualify for volume discounts.

With respect to coin functions, the potential for abuse of volume discounts is even greater, because as discussed above, while the LECs have begun to deploy some "smart" payphones, LECs generally utilize coin lines and coin line features today, while IPPs generally do not. Therefore, the FCC should prohibit volume discounts for coin lines and coin line features for a period of five years after the effective date of the Section 276 regulations.

2. Inside Wire (¶ 47)

Currently, the wire between what would ordinarily be the customer premises demarcation point (see 47 CFR § 68.3) and the LEC payphone is treated as network plant. In the future, of course, when a Bell Company provides service to either Bell payphones or IPPs installed after the effective date of the rules, the Bell Company must provide a nondiscriminatory "demarcation

[8] According to the information submitted in connection with the Bell companies' own motion to vacate the AT&T consent decree, Bell companies and other LECs continue to control some 85% of the installed base in their local exchange territories. If these estimates are correct, an individual IPP provider would have to own approximately 20 - 25% of all of the IPPs in a Bell company's territory in order to qualify for a discount based on a "volume" level of 5% of total Bell payphones. This fact supports our position that Bell companies should be required to allow aggregation of individual IPP providers' lines. A 5% criteria would leave room for 4 or 5 aggregators to compete for the participation of individual IPP providers. See text following this note.

point" as with any other CPE. The demarcation point should be the same one as LECs use for IPPs today.

The embedded wire terminating in Bell payphones should be treated basically the same way as inside wire was treated during the transition for other Bell company CPE. That is, the wire beyond the new demarcation point will remain on the books of the Bell company's regulated exchange operations until depreciated; however, the wire must be freely available to the location provider, and when the Bell payphone is replaced by an IPP, the wire must be freely available for the use of the IPP.

3. Other Services(¶ 48)

The Commission requests comment on what other services that are available from Bell Companies must be available on a nondiscriminatory basis to Bell payphones and IPPs.

a. Fraud protection

Fraud protection advantages enjoyed by LEC payphones are partly due to their use of network coin control functions, which are not as easily bypassed as set-based coin control functions. This aspect of fraud protection is addressed by requiring LECs' network call rating and coin supervision functions to be available on an unbundled, individually programmable nondiscriminatory basis to IPPs, as discussed above.

Another aspect of fraud protection is the assignment to payphones of specialized telephone numbers -- i.e., the 8000 and 9000 series -- to alert international operators that a telephone to which a collect or third party call is attempted to be billed is a payphone. These payphone-specific telephone numbers should be made available on a nondiscriminatory basis to all payphone service providers. Further, the LECs must be required to redress the discrimination reflected in the distribution of numbers in the embedded base. When a LEC payphone is changed out, that number should be added to the pool of payphone-specific numbers available to PSPs. Previously assigned numbers must not continue to be reserved solely for LEC payphones.

Another aspect of fraud protection involves LEC tariff provisions that prevent LECs from being held liable for fraudulent calling originating from LEC payphones. Such tariff provisions must either apply or not apply, on a nondiscriminatory basis, to Bell company payphones and IPPs.

b. Installation and maintenance

Payphones and inside-wire installation and maintenance (I&M) services must be available on a nondiscriminatory basis to Bell payphones and IPPs. If I&M services are provided to Bell payphones on a contract basis, then they must be available to IPPs on the same terms and conditions. If I&M services are provided to Bell payphones on an allocated-cost basis, then they must be available to IPPs on that basis as well. While the Commission has previously required services such as I&M to be made available to competitors on an allocated cost basis, the Section 276 mandate to eliminate all discrimination requires this result. I&M services also should be subject to volume discounts limits, including requirements to allow aggregation. See Section A.1. above.

c. Joint marketing

Joint marketing opportunities with the LEC must be available on a nondiscriminatory basis to LECs and IPPs. If LEC payphones are marketed to location providers in association with LEC network services (including operator services), then the LEC must provide IPP providers with equivalent opportunities to market IPPs in association with regulated LEC services.

d. Per call tracking

Tracking of calls from payphones, either for compensation purposes or other purposes, must be available on a nondiscriminatory basis to LEC payphones and IPPs.[9] Tracking functions also should be subject to volume discount limits and aggregation requirements.

e. Billing, collection, and validation

Billing, collection and validation must be provided on a nondiscriminatory basis to LEC payphones and IPPs. Thus, in those instances where LEC payphone operations include the provision of operator services -- for example, where operator services are provided by inmate calling systems or store-and-forward mechanisms in "smart" public payphones -- or other services that involve billing, collection, and validation, the LECs may not prefer their own payphone operations in the provision of such services. The nondiscriminatory treatment must extend to the LEC's treatment of uncollectable accounts. Any services provided to LECs should be reflected in

[9] Further, BOCs may not discriminate between their payphones and IPPs in the provision of ANI verification for purposes of payphone compensation.

separate billing agreements that are also available to IPPs. Again, volume discount limits and aggregation requirements should apply.[10]

f. Commission Payments

Commission payments for operator services (or any other services for which commission payments are offered) provided by the LECs must not discriminate between LEC payphones (or LEC payphone location providers) and IPPs, and that such commission payments should be subject to restrictions on volume premiums, and aggregation requirements, similar to the restrictions on volume discounts discussed above.

B. Transfer to Unregulated Status (¶ 49)

As explained in the Conference Committee's Joint Explanatory Statement, in order to carry out Section 276 "[t]he BOC payphone operations will be transferred, at an appropriate valuation, from the regulated accounts associated with local exchange services to the BOC's unregulated books." Conference Report at 158. Such a transfer is, of course, generally necessary whenever assets paid for by ratepayers are removed from regulated status. The transfer of payphone equipment out of regulation is analogous in many respects to the transfer that took

[10] The Commission's past decisions draw a distinction between a LEC's billing and collection services, which are classified as nonregulated, and other services such as validation and billing-name-and-address, which are considered regulated common carrier services. However, Section 276(a)(2) does not distinguish between regulated and non-regulated services of a LEC. It simply states that a Bell company "shall not prefer or discriminate in favor of its payphone service." 47 U.S.C. § 276(a)(2). This prohibition would apply to any nonregulated service provided by a BOC to a payphone division. See Citizens Utility Company, DA96-556 (April 22, 1996).

place when the Commission deregulated CPE in the Computer II proceedings. See Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry), Report and Order, 95 FCC 2d 1276 (1983) ("Detariffing Order"). However, there are certain differences that require different treatment, as discussed below.

1. Assets to be Transferred

First, the Commission should identify the types of assets to be transferred. The assets to be transferred should include the types of assets that were included in CPE deregulation, i.e., all facilities at the payphone location, including the payphones, any internal processors, booths, pedestals, pads, etc., and related property. GPCA agrees that including network support facilities generally would be inappropriate[11] because it would allow the Bell companies to continue providing a different form of interconnection to their payphones than is available to IPP providers.

The assets to be transferred also must include long-term space rental contracts or analogous contracts between the Bell companies and location providers. Location is clearly a key element in the value of a payphone. For example, a payphone located inside the lobby of a major hotel undoubtedly produces far more revenue and profit to the payphone provider than does a payphone located on an isolated country road -- or, for that matter, than a payphone located at an office building next door to the hotel. Since the contract is a key determinant of the value of the payphone as installed, long-term contracts should be transferred with the payphone and the value of the contract should be included in the valuation of the payphone. Detariffing Order, 95

[11] However, GPCA agrees with the Inmate Calling Service Providers' Coalition that specialized network facilities such as inmate calling service modules which are a discrete, separable equipment dedicated to particular customers such as confinement facilities, should be transferred out of regulation.

FCC 2d at 1310 (1983) ("economic value" includes more than physical assets, and should consider valuation of deregulated business as a "going concern"). See also discussion below.

2. Mechanism for transfer

Next the Commission must determine the most appropriate mechanism of transfer. The most effective means of ensuring that payphone operations are transferred at fair value is to hold an auction. Each LEC's existing payphone base could be auctioned to establish the market price of LEC payphone operations to the highest bidder -- be it the LEC's unregulated payphone entity or a third party.

Such auctions would be feasible. The Commission recently has acquired a good deal of experience in auctioning spectrum. Auctions could be structured so that only parties other than LECs would actually bid. To keep bidders honest, procedures similar to the spectrum auctions could be followed. Bidders could be required to submit a certified application with an up-front deposit, and to pay the balance of their bid within a set time after being declared a winner. Amounts deposited could be forfeited if the winning bidder failed to follow through. See 47 CFR §§ 1.2105-2107. However, the LEC would have the option of "buying back" its payphone operation by matching the winning bid. This approach would satisfy any concerns about forced divestiture of property. In order to be manageable, auctions could be limited to the largest 10 or 15 LECs' payphone operations, with other LEC payphone divisions valued in proportion to the prices established for largest LECs.

Alternatively, the Commission could prescribe the valuation of the payphones. If valuation is to be prescribed, the value standard, of course, is economic value as defined by Democratic

National Committee v. Washington Metropolitan Area Transit Commission, 485 F.2d 786 (D.C. Cir. 1973), cert denied, 415 U S. 935 (1974). In Computer II, the Commission concluded that net book value provided an appropriate surrogate for the economic value of the Bell companies' CPE transferred out of regulation. Detariffing Order, 95 FCC 2d at 1206-10. In this case, however, net book value is not an adequate measure of the economic value of the Bell companies' payphone assets. Net book value does not capture the value of the Bell companies' location contracts, which as we have just explained is an important element in the overall value of their payphone assets.[12]

Other possible valuation methods include appraisals by disinterested parties, mimicking of capital budgeting, and the per-payphone prices of recent acquisitions of IPP payphone providers. In regard to the last alternative, GPCA is attaching to its comments the results of a study performed by NuCom, an IPP provider, which reviews the per-payphone prices paid in recent acquisitions of IPP providers. See Attachment 1. As shown, the average per payphone price was about $3,200. At a minimum, this establishes a benchmark for reviewing other proposed transfer valuation methods.

C. End User Common Line Charges (¶¶ 53-54)

The Commission also requests comment on the question of how the elimination of carrier access charge elements for subsidizing Bell payphones should affect end user common line

[12] In the Inmate CPE decision, adopted before enactment of the Telecommunications Act of 1996, the Commission directed the LECs to reclassify inmate CPE based on net book value. However, the Commission did so because it found that as a legal matter, inmate CPE was already subject to the Computer II rules. Pursuant to Section 276 of the new Act the Commission is free to adopt a stricter standard, if appropriate.

("EUCL") charges. The Commission tentatively concludes that, to avoid discrimination among payphone providers, the EUCL charge should apply to both LEC payphone lines and IPP lines. GPCA does not agree.

As the American Public Communications Council explained in its Petition for Rulemaking, RM 8723, filed October 23, 1995, at an early stage of its access charge rulemaking, the Commission recognized that it would not be feasible to apply EUCL charges to public pay telephones. First Reconsideration Order, 97 FCC 2d at 703-04. The purpose of the end user access charge is to recover the cost of an exchange loop from the subscriber who uses that loop to make or receive telephone calls:

> The cost of a common line is attributable to the user who has that line, which is dedicated to his use and which remains available for his exclusive use in sending or receiving any telecommunication that can be transmitted through the local dial switch.

Id. at 688-89 (emphasis added). A public payphone line, however, is not dedicated to a single end user. Rather, use of the public payphone line is randomly distributed among those members of the public who happen to require the use of a payphone at a particular location. Accordingly, the Commission concluded that the non-traffic-sensitive ("NTS") costs of payphone lines should be recovered by usage-based charges rather than by the application of an EUCL charge. Id. at 703-04.

These considerations remain valid today and apply to all public payphones.[13] As discussed in the American Public Communications Council's comments on payphone compensation, the

[13] By contrast, in other situations where EUCL charges apply to lines connected to telephones used by transient end users, e.g., "semi-public" telephones and telephones in hotel and hospital rooms, the phones are available for private as well as public use. For example, semi-public telephones may have extensions added for the exclusive use of the location owner. The same is true for hospital and hotel telephones connected by a private branch exchange.

existing payphone compensation system does not equitably allocate the costs of operating payphones among payphone users. Rather than impose an additional cost that will add to compensation burden, the Commission should simply continue the EUCL exemption and apply it to all payphone lines instead of just LEC payphone lines. In any event, whatever the Commission's decision as to the permanent scheme, all discrimination in the application of the EUCL must immediately size. Pending implementation of a permanent comprehensive compensation, the Commission should immediately issue an order prohibiting any LEC from applying EUCL charges to IPP lines until such time as LEC payphone costs are fully removed from CCL charges and permanent regulations have been implemented regarding nondiscriminatory application of EUCL charges.

D. Nonstructural Safeguards (¶¶ 57-66)

The Commission proposes nonstructural safeguards in four areas: (1) nondiscriminatory access to network features and functionalities; (2) restrictions on the use of Customer Proprietary Network Information ("CPNI"); (3) network disclosure rules; and (4) nondiscrimination in the provision, installation, and maintenance of services as well as nondiscrimination reporting requirements. In addition, the Notice indicates that cost accounting regulations will be addressed in a separate proceeding.

1. Nondiscriminatory Access to Network Features and Functionalities

The Commission proposes to require each BOC to file, within 90 days of the effective date of the order in this proceeding, an initial CEI plan describing how it intends to comply with

("PBX").

the CEI equal access parameters and nonstructural safeguards for the provision of payphone services. Subsequently, the Commission proposes to allow BOCs to integrate the filing of information on payphone services unbundling and nonstructural safeguards with their ongoing ONA filings.

As discussed above, the details of non-discriminatory offerings to be provided under CEI plans should not be left to the Bell companies (and other LECs) to decide. While the legislation specifies that Computer III is the minimum standard, it is only a minimum. The Commission has the authority and the obligation to impose stronger safeguards where necessary to ensure that subsidies and discrimination are ended. The payphone context is significantly different from Computer III because the Bell companies and other LECs are not seeking to enter the payphone business for the first time on an unseparated basis. While in Computer III the Bell companies needed to have their CEI plans approved by the Commission before they could be relieved of separate subsidiary requirements, in the payphone context the Bell companies and other LECs have been providing payphone service without any meaningful safeguards. Thus, they have little to gain by "getting their CEI plans right the first time."

In order to prevent the CEI process from becoming a vehicle for endlessly disputes, stonewalling and delay, the Commission should clarify the precise conditions under which LECs must offer critical unbundled elements such as those described above.

At the same time, the list described above is not exhaustive. In general, Bell companies must provide unbundled network elements at the level of disaggregation reflected in Section 251(c)(3) of the Act.

Another key concern is that the Commission must have a sanction for LECs' failure to file timely, adequate CEI plans. If plans are not filed by the 90-day deadline, the Commission should make clear that it will apply the maximum daily forfeiture to a continuing failure to file. Repeated or grossly inadequate filings should draw comparable sanctions.

Of course, if the FCC decides that it is in the public interest to allow Bell companies to select the interLATA carriers presubscribed to their payphones, implementation of such authority must be contingent on Commission approval of the Bell companies' CEI plans.

2. CPNI and Confidentiality of IPP Information (¶ 63)

The Commission tentatively concludes that the CPNI rules adopted in CC Docket No. 96-115 should apply to a BOC's provision of payphone service. Since rules have not yet been adopted in that proceeding, it is difficult to address the issue of whether those rules would be sufficient. Because there are significant differences in the payphone context, the Commission should address payphone-specific CPNI-related issues here, not exclusively in CC Docket No. 96-115.

Specifically, it is important to address who is the customer for purposes of payphone services. At present, when an IPP provider offers payphone service, the IPP provider is required to subscribe to exchange service, including an access line, provided by the local exchange carrier ("LEC"). Thus, the IPP provider is a "customer" of the LEC, and Section 222 requires the LEC to refrain from using information about the use of the payphone, without authorization, for any purpose other than the provision of the services subscribed to by the IPP provider.

As for LEC payphones, in comments submitted in the Commission's Docket No. 96-115 rulemaking, GPCA has explained why, prior to the implementation of Section 276 restructuring rules, the information regarding use of LEC payphones is "aggregate" CPNI that should be made available to any party upon reasonable request. GPCA's comments in that rulemaking are hereby incorporated by reference into these comments. At a minimum, pending the implementation of CEI plans that provide for IPPs and LEC payphones to be given the same nondiscriminatory treatment as "customers," the Commission should continue to treat information regarding usage of LEC payphones as "aggregate" information that must be available to any party on a nondiscriminatory basis.

Further, until the CEI plans have been submitted, the Commission should reserve decision on whether the LEC payphone service provider will be its own "customer" in the future for purposes of the CPNI rules.

3. Network Disclosure (¶ 64)

Network disclosure should be required at least to the extent provided in the Computer III rules, and such disclosure should also be subject to the CPE specific requirements of Part 68 of the FCC rules and Computer II, as well as the requirements of the new Telecommunications Act with respect to such disclosures. 47 U.S.C. § 273.

4. Nondiscrimination in Installation, Maintenance, and Quality of Service (¶ 65)

GPCA generally supports the Commission's proposed safeguards in this area. As discussed above, we also believe LECs, including but not limited to the BOCs, should be required to offer payphone installation and maintenance services to IPP providers on the same terms as they offer these services to LEC payphone service providers.